needless to repeat it here. N. & W. Ry. Co. v. Shott, 92 Va. 34, 22 S. E. 811; Richmond Ry., etc., Co. v. Garthright, 92 Va. 627, 24 S. E. 267, 32 L. R. A. 220, 53 Am. St. Rep. 839.

The judgment complained of must be affirmed.

Note.

To our mind this case comes dangerously near to upsetting the ruling in the Stegall Case, 54 S. E. 19. In that case as in the case at bar, the public, with the defendant's consent, used the track daily as a pathway, but the court said that the plaintiff, killed on the defendant's bridge, by reason of the failure of the railroad company to maintain a lookout, was a bare licensee to whom no duty of prevision was owed by the defendant. This question has been ably discussed, and the apparent conflict in the cases pointed out by Mr. Robert C. Withers, in an able and interesting article in 12 Va. Law Reg. 419.

VIRGINIA-CAROLINA CHEMICAL CO. v. KNIGHT.

March 14, 1907.

[56 S. E. 725.]

1. **Evidence—Opinions—Admissibility.**—Where an employee was injured while assisting in hoisting lumber by a rope breaking or being cut while passing through a snatch block, it was error, in an action for his injuries, to receive opinion evidence concerning the safety of the block, and as to where an experienced man performing the employee's duties would have stood in safety to himself and at the same time perform his duties.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 20, Evidence, §§ 2189, 2190.]

2. **Witnesses—Impeachment—Competency of Evidence.**—Where, in an action for injuries to an employee, H. testified for defendant that he was an independent contractor, and that the employee was in his service and not defendant's, a letter written by defendant's attorneys to the clerk of the court, directing the subpœna of certain witnesses, and stating that the witnesses whose addresses were not given, worked for defendant at the plant where the accident occurred, and containing H.'s name, but not giving his address, was not admissible to rebut H.'s statement that he was an independent contractor; it not appearing that H. knew of or approved the letter.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 50, Witnesses, § 1276.]

3. **Evidence—Admissions—Letter of Attorneys.**—Such letter was not admissible as an admission on defendant's part that H. was an employee of defendant at the time of the accident.

4. Same—Writings—Carbon Copies—Notice to Produce Original.—Where three copies of a writing are made at the same time by the same impression of a pencil, one of the copies must be regarded as a triplicate original, and is admissible without notice to produce the original.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 20, Evidence, §§ 561, 564, 566.]

5. Same—Admissions—Authority of Agent.—Where there was an issue as to whether plaintiff in an action for personal injuries was the employee of defendant or of another, a report made by defendant's superintendent, pursuant to his duty to report injuries to employees, was admissible as an admission by defendant that plaintiff was an employee; it being immaterial that the superintendent had no personal knowledge of the accident.

6. Witnesses—Privileged Communication—Report to Attorneys—Admissibility.—A report of the superintendent of defendant's plant, where plaintiff was employed when injured, concerning the accident, sent to defendant's attorneys before any action had been brought or threatened, was not inadmissible as a privileged communication.

7. Master and Servant—Action for Injuries—Evidence—Admissibility.—Where an employee sued for personal injuries, the fact that his employer carried accident indemnity insurance could throw no light upon the question whether defendant was negligent, though the insurance might have the effect of lessening its motive to be careful.

8. Trial—Instructions—Construction as a Whole.—Where there was an issue as to whether plaintiff in an action for personal injuries was the employee of defendant or not, defendant could not complain that an instruction given for plaintiff failed to define what in law constitutes an employee, where, when read with an instruction given for defendant, the jury was clearly informed upon the question.

Error to Circuit Court of City of Richmond.

Action by George E. Knight against the Virginia-Carolina Chemical Company. From a judgment for plaintiff, defendant brings error. Reversed, and remanded for new trial.

Cabell, Talley & Cabell, for plaintiff in error.
L. O. Wendenburg, for defendant in error.

BUCHANAN, J. The plaintiff in the court below, the defendant in error here, brought his action against the Virginia-Carolina Chemical Company to recover damages for personal injuries resulting to him by reason of the alleged failure of the defendant to furnish reasonably safe and sound appliances and instrumen-

talities with which to work whilst engaged, as is averred, in its service, along with others, in the construction of a warehouse.

At the time the plaintiff was injured he was assisting in raising lumber by means of a rope, which ran from the ground floor to the top of the building, there passed over or through a block, and then came down about 10 or 15 feet, to and through a snatch block, and over the wheel of the same to a piece of machinery used for winding the rope, thus raising the lumber. The duty of the plaintiff was to remain on the ground and take charge of a guy rope, used in guiding and controlling the lumber, to which the lower end of the rope was fastened, in its ascent to the upper part of the building. Whilst performing that duty, as a load of lumber was being carried up by means of the appliances above described, and when the lumber had gotten about half way up to its landing place the rope was caught over the edge of the wheel in the snatch block, as is alleged, and thereby broken or cut, causing the lumber to fall upon the plaintiff, inflicting the injuries complained of.

Upon the trial of the cause the plaintiff introduced a witness, who was shown the snatch block and asked to tell the jury whether or not it was a safe appliance, and, if it was not, to state in what particulars it was unsafe. Another witness was shown the snatch block, the wheel of which had been broken since the accident happened, and was asked to explain to the jury how it came about that the strands of the rope which was used should separate and one strand should pass over the edge of the sheave, and, if there was anything about the snatch block that would explain that, to point it out to the jury. He was further asked where an experienced man, who had charge of the guy rope and was guiding the lumber as it was being carried up, would stand in safety to himself and at the same time perform this duty. All these questions were objected to, because, the appliance used in raising the lumber being simple, it was not a case for expert evidence, and was an effort to substitute the opinion of the witness for the opinion which the jury were to form from the facts. The court overruled the objections and permitted the witnesses to answer the questions. This action of the court is assigned as error.

"No principle of law is better settled," as was said in the case of Southern Ry. Co. v. Mauzy, 98 Va. 692, 694, 37 S. E. 285, 286, "than that the opinion of witnesses are in general inadmissible; that witnesses can testify to facts only, and not to opinions or conclusions based upon the facts." That was a case where the plaintiff had been injured in loading car wheels, and it was held that the trial court erred in permitting certain wit-

nesses to testify, even if they had been shown to be experts, as the question of danger or safety in loading car wheels in a particular mode is one which any person of common intelligence and observation could as readily determine as the so-called experts.

While the general rule is as above stated, there are exceptions to it; but there is nothing in the case under consideration, so far as we can see, to take it out of the general rule. When all relevant facts can be or have been introduced before the jury, and the latter are able to deduce a reasonable inference from them, no reason exists for receiving opinion evidence, and it is inadmissible. See 17 Cyc. 41; Va. Iron, etc., Co. *v.* Tomlinson, 104 Va. 254, 51 S. E. 362; Guarantee Co. *v.* Nat. Bank, 95 Va. 492, 28 S. E. 909.

Another assignment of error is to the action of the court in permitting the plaintiff to introduce in rebuttal a letter from the attorneys representing the defendant to the clerk of the court, directing him to have summoned for the defendant certain witnesses, in which it was stated that all the witnesses whose addresses were not given were working for the defendant at its plant where the accident happened. Among the witnesses named, and whose address was not given, was William Haw, who was introduced as a witness by the defendant, and who testified that he was an independent contractor to erect the warehouse for the defendant, and that the plaintiff, when injured, was in his service, and not in the service of the defendant. Upon cross-examination it is claimed that he testified that he had informed the attorneys of the defendant of this fact before the former trial of the case, in which that defense was not made nor relied on until the latter part of the trial, when Haw testified that he was an independent contractor. The admission of the letter was objected to, but the court overruled the objection and admitted it in evidence, upon the ground that it tended to rebut Haw's statement that he was an independent contractor, or, in other words, to impeach Haw, as the counsel of the plaintiff insists in his brief.

One of the recognized modes of impeaching a witness is by proof of prior inconsistent or contradictory statements made by him, verbally or in writing. But neither verbal statements nor writings of persons other than the witness to be discredited, for which he is not responsible and which have not been approved by him, are admissible in evidence to contradict him. See Field *v.* D., L., etc., R. Co., 69 N. J. Law, 433, 435, 436, 55 Atl. 241; Buel *v.* State, 104 Wis. 132, 147-149, 80 N. W. 78; 30 Am. & Eng. Enc. L. 1113.

There is no pretense that the witness Haw had ever heard,

much less approved, of the letter which the court permitted to go to the jury to impeach him.

Neither do we think that the letter was admissible as an admission on the part of the attorneys that the witnesses named were employees of the defendant at the time of the injury complained of. The letter was written solely for the purpose of directing what witnesses were to be summoned and where they could be found, and for no other purpose. While the attorney of a party to a litigation has very broad powers in the management of his case, and his admissions generally bind his client in all matters relating to the progress and trial of the cause, yet to have this effect they must be distinct and formal, and made for the purpose of dispensing with the formal proof of some fact at the trial. 1 Greenleaf on Ev. § 186; Weeks on Attorneys, § 233; 1 Elliott on Ev. § 256; 4 Cyc. 949, 950.

The action of the court in admitting in evidence a copy of a paper headed "Immediate Report of Accident," signed by "H. Harlan, Employer," in which it was stated, among other things, that the plaintiff at the time of the accident was an employee of the defendant, is assigned as error.

The admissibility of the paper was denied on three grounds: (1) That it is a copy, and not the original; (2) that the original was sent to the attorneys representing the defendant in this case, and is, therefore, a privileged communication; and (3) that it was not made by one who had authority to bind the defendant by his admissions.

It appears that the paper offered in evidence was one of three, all made at the same time by the same impression of the copying pencil. One, called the original, was made to be sent to the Travelers' Insurance Company, in which it is claimed the defendant had a policy of indemnity, one to be sent to the manufacturing department of the defendant, and the other to be retained for its files.

The paper in question must be regarded as a triplicate original, and under the decision of C. & O. Ry. Co. *v.* Stock, 104 Va. 97, 51 S. E. 161, was, if otherwise proper, admissible in evidence.

It appears from the evidence of the cashier and chief clerk of the defendant company that it is a matter of routine, whenever an accident occurs, for the superintendent to report the accident to the main office of the defendant, as we understand the evidence, and that office sends the report to the insurance company which has undertaken to indemnify the defendant. It appears that the report in question was made by the superintendent of the Richmond Chemical Works, the place where the accident occurred, and a branch of the defendant company's works. It

would, therefore, seem that the report was made in the line of the superintendent's duty, which would, if otherwise unobjectionable, render it admissible in evidence against the defendant, under the case of Lynchburg Telephone Co. *v.* Booker 103 Va. 594, 50 S. E. 148. See, also, Western Union Tel. Co. *v.* Yopst, 118 Ind. 248, 20 N. E. 222, 3 L. R. A. 224; 1 Elliott on Ev. § 255; 16 Cyc. 1019-1023.

It is claimed that the superintendent had no personal knowledge of the accident, and this claim seems to be borne out by the evidence. This would not render the report inadmissible, but only affects its weight.

The remaining ground of objection to the admission of the report is that it was a privileged communication. The report was sent to "Messrs. Cabell & Cabell." The evidence tends to show that they were the attorneys of the insurance company, as well as the attorneys of the defendant, but it does not clearly appear whether the report was sent to them as attorneys of the defendant or as attorneys of the insurance company. If sent to them as attorneys of the insurance company, it was clearly not a privileged communication, any more than if it had been sent directly to the insurance company. Neither do we think it was a privileged communication, if sent by the defendant to Cabell & Cabell as its attorneys.

It was held in the case of Skinner *v.* Great Northern Ry. Co., L. R. 9 Exch. 298, that where an accident occurs on a railway, and the officials of the company in the course of their ordinary duty make a report to the company, whether before or after action brought, the report is not privileged. But when a claim has been made, and the company seeks to inform itself by a medical examination as to the condition of the person making the claim, the report made to them is privileged.

In the case at bar the report in question was made by an official of the defendant in the course of his ordinary duty immediately after the accident, before any action had been brought or threatened. A report made under those circumstances, although the original or a copy of it was afterward communicated to the defendant's attorneys when suit was threatened or brought, is not a privileged communication, within the reason of the rule, under the authorities. See 4 Wigmore on Ev. §§ 2307, 2308, 2318, and cases referred to in the notes.

It is unnecessary to consider the assignment of error based on bill of exceptions No. 8, as the question involved is not likely to arise upon the next trial, since, as we have seen, the copy or triplicate original of the report of the accident offered in evidence was admissible, without notice to produce the original. The fact that the defendant was insured against accidents could

throw no light upon the question of whether or not the defendant was guilty of negligence. It may be true that the fact of insurance might have the effect of lessening the reason or motive of the defendant to be careful; but the question for the jury to pass on was, not of how much or how little motive the defendant may have had for being careful, but whether as a matter of fact it had exercised reasonable care.

As was said by the Supreme Court of Maine, in the case of Sawyer *v.* Shoe Co., 90 Me. 369, 38 Atl. 333, "to allow juries in cases of this kind to take into consideration the fact that an employer has insured against accident would do more harm than good, and would increase the already strong tendency of juries to be influenced in cases of personal injury, especially where a corporation is defendant, by sympathy and prejudice." See, also, Tremblay *v.* Harnden, 162 Mass. 383, 38 N. E. 972; Cosselmon *v.* Dunfee, 172 N. Y. 507, 65 N. E. 494.

The action of the court in giving instruction No. 1, asked for by the plaintiff, is assigned as error. The objection made to the instruction is that it "does not define what in law constitutes an employee of the defendant company. In this case the issue was sharply drawn as to whether Knight was a servant of the defendant company, under its direction and control, or whether he was the servant of an independent contractor. The instruction fails to make clear this distinction."

If this had been the only instruction given, there would be, under the facts of this case, much force in the objection made to it; but, when read in connection with the defendant's instruction No. 1, as it must be, the jury could not have been misled by it. The defendant's instruction No. 1 clearly informed the jury that the relation of master and servant did not exist between the defendant and the plaintiff, if Haw was an independent contractor and the plaintiff was employed by him.

As the evidence will be different upon the next trial, it is unnecessary to consider the assignment of error based upon the refusal of the court to set aside the verdict because contrary to the evidence.

The judgment complained of must be reversed, the verdict set aside, and the cause remanded for a new trial, to be had not in conflict with the views expressed in this opinion.

Note.

Admissibility in Evidence of Duplicate or Triplicate Copies.—Of the many interesting questions of evidence decided in this case, the ruling that carbon copies are original and not copies is of peculiar importance because of the almost universal use of the typewriter by all business people at the present day. And it is a matter of common knowledge that no careful business man ever

fails to retain a duplicate or carbon copy of all work done on the typewriter. The principal case extends the rule still further, and includes triplicate originals.

One of the three cases in which notice to produce an instrument is unnecessary, is where the instrument produced and that to be proved are duplicate originals. Waterman *v.* Davis, 66 Vt. 83, 28 Atl. 664.

A duplicate is defined as a document essentially the same as some other document, executed in duplicate in order that each may have an original. Rapalje and Lawrence, Law Dict. 424.

Notices.—Every written notice is to be proved by a duplicate original; for if it were otherwise, the notice to produce the original could be proved only in the same way as the original notice itself, and thus a fresh necessity would be constantly arising ad infinitum to prove notice of the preceding notice; therefore a manifold copy of a notice to a delinquent taxpayer was held admissible in evidence without notice to produce the original. Waterman *v.* Davis, 66 Va. 83, 28 Atl. 664, citing Eisenhart *v.* Slaymaker, 14 Serg. & R. (Pa.) 153.

It was held, in Kine *v.* Beaumont, 3 Brod. & B. 288, that the copy of an original letter, giving notice of the dishonor of a bill, without notice to produce the original letter, was admissible; Dallas, C. J., saying that he could not see any great difference between a duplicate original and a copy made at the time.

Where four notices, in writing, of a demand of possession of land are prepared at the same time, all alike, except that three of them are addressed to three different occupants of the land, respectively, and the fourth one is retained by the party preparing them, the one retained is not a copy, but all are original, duplicate papers. Gardner *v.* Eberhart, 82 Ill. 316.

Autograph from Copying Machine.—The duplicate of a writing, taken from the autograph at one impression by means of a copying machine, cannot be read in evidence as an original. Nodin *v.* Murray, 3 Camp. 228, 13 R. R. 796.

Leases.—In a suit to enjoin defendant from interfering with certain land, plaintiffs alleged that they made an agreement for the lease of three contiguous tracts of land for ten years, and went over and located the boundaries with their lessor, and designated one tract, from which they should take clay for tile making: that thereafter the parties attempted to reduce the contract to writing, in which the latter tract was described as "a three-cornered piece in the northeast corner of the last-described land, * * * keeping south line parallel with congressional survey. * * *" Plaintiffs took possession, erected tile mills, fenced the three-cornered piece, and continued to manufacture tile therefrom for four years, with the assent and knowledge of their lessor and defendant, who was the lessor's grantee. Upon the trial a paper purporting to be a copy of the lease was, under defendant's objection, read without showing the loss of the original. It appeared that only one copy was originally executed, and the parties drew off a new copy, signed it, and delivered same to plaintiff. Held, that the copy was properly introduced in evidence as an original paper. Weaver *v.* Shipley, 127 Ind. 526, 27 N. E. 146.

Counterpart of Letters.—If two letters are written at the same time to the same person, one being the exact counterpart of the other, one being sent to the person addressed, and the other retained by the writer, each is an original, and the one retained may

be put in evidence by the party who retained it, without notice to the opposite party to produce the other. Hubbard *v.* Russell, 24 Barb. 404.

Contracts.—Original duplicate copies of a written contract are of equal dignity. Each is primary evidence. Zipp *v.* Colchester Rubber Co., 12 S. Dak. 218, 80 N. W. 367.

In an action for damages for unreasonable delay, where cattle were delivered to a railroad company for immediate shipment, but a written contract was executed by them two days afterwards, proof of the written contract on the part of the plaintiff below was objected to, because it appeared that a duplicate was signed and left with the company at the time, and no notice had been served on the company to produce this duplicate on the trial, but it was held, that the plaintiff might rely on his own copy, and was under no obligation to call for the other. Cleveland, etc., R. Co. *v.* Perkins, 17 Mich. 296.

Proofs of Loss.—In an action on an insurance policy, a duplicate proof of loss is properly admitted in evidence, though marked "copy." One is as much the copy as the other, and one is as much the original as the other. Catron *v.* German Ins. Co., 67 Mo. App. 544.

Copies of Letters.—It is well settled that a letter press copy of a letter or telegram is not original, but secondary evidence. The letters themselves are the primary evidence, and must be procured, or their nonproduction satisfactorily accounted for. Watkins *v.* Paine, 57 Ga. 50; Anglo-American Packing, etc., Co. *v.* Cannon, 31 Fed. 313.

A press copy of a letter proved to have been posted with the right address was admitted as prima facie evidence that the letter containing a notice actually reached the party. Futcher *v.* Hinder, 1 F. & F. 357.

A machine copy of a letter written by the plaintiff to a third party was allowed to be given in evidence as an admission on the part of the plaintiff, though not admissible as a letter. Nathan *v.* Jacob, 1 F. & F. 452.

A. was examined before commissioners of bankrupt and produced a machine copy of a letter he had sent to R. While A. was before the commissioners, the solicitor to the assignees made a copy of such copy. Held, that in an action by the assignees against A. the last made copy was not admissible against A. without reading his examination, although notice had been given to A. to produce the original copy. Holland *v.* Reeves, 7 Car. & P. 36.

Photographic Copies.—In Eborn *v.* Zimpleman, 47 Tex. 503, 26 Am. Rep. 315, it was held, that photographic copies of instruments sued on can only be used as secondary evidence.

Telegrams.—A telegram is a document which is executed in counterpart. Each counterpart is primary evidence as against the party executing it. Anglo-American Packing, etc., Co. *v.* Cannon, 31 Fed. 313.

Privileged Communications.—But in a late case in Ohio a ruling has been made which seems to be directly contrary to that in the principal case, as to the point that the superintendent's report was not a privileged communication. A report made to the claim agent of a street railway company by the conductor and motorman of an electric car, of an accident in which a passenger was injured, which was made pursuant to a standing rule of the company for the information of the claim agent, as a basis for settlement or for use

of counsel in case of suit against the company, is held, in Re Schoepf (Ohio) 6 L. R. A. (N. S.) 325, to be a privileged communication, the production of which cannot be enforced in the taking of depositions before the trial in a suit against the company for injury received in such accident.

JORDAN'S ADM'X *et al. v.* RICHMOND HOME FOR LADIES *et al.*

March 14, 1907.

[56 S. E. 730.]

1. **Wills—Designation of Beneficiaries—Corporations.**—A testatrix made a gift to "the Trustees of the Presbyterian Home for Old Ladies situated in Richmond." The only home for ladies in Richmond was the "Richmond Home for Ladies," incorporated to give a home to Presbyterian and Methodist indigent women, and permitting the admission of women not connected with either of the denominations. The testatrix was a Presbyterian. Three years after the execution of her will she consulted an attorney with a view of having him redraft it. In the redraft a blank space was left for the insertion of the correct name of the corporation. Held, that the Richmond Home for Ladies was identified as the beneficiary intended.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, § 1110.]

2. **Corporations—Constitutional Provisions—Purpose of Incorporation.**—A benevolent business corporation, with a capital stock, chartered for the purpose of maintaining an institution in which indigent women connected with designated religious denominations might be provided with a comfortable home, either gratuitously or on such charges as might be prescribed, and authorizing the admission of infirm women not connected with either of such religious denominations, and governed by a board of directors, with power to fill vacancies and to appoint managers, does not bear such relations to any religious denominations as to contravene Const., art. 5, §§ 14, 17, prohibiting incoporation of religious denominations, etc.

3. **Same.**—Acts, 1853-54, p. 32, c. 46, as amended by Acts 1855-56, c. 36, and by Acts 1866-67, p. 577, c. 129, and, as amended, carried into Code 1887, § 1145, authorizing courts to grant charters for the conduct of any enterprise or business which might be lawfully conducted by a body politic or corporate, except to construct a turnpike, railroad, canal, or bank, authorizes the incorporation of an institution for the support of indigent women, either gratuitously or on such charges as may be prescribed.

4. **Charities—Bequests—Validity—Certainty of Purpose.**—A general bequest of the income of certain property to a benevolent and business corporation, existing under a valid charter for the purpose of main-